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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11

12 RONALD CUPP, an individual  
13 Plaintiff,  
14

15 vs.

16 COUNTY OF SONOMA, a  
municipal corporation; TENNIS  
17 WICK, in his individual and official  
capacities; TYRA HARRINGTON, in  
18 her individual and official capacities;  
TODD HOFFMAN, in his individual  
19 and official capacities; JESSE  
CABLK, in his individual and official  
20 capacities; DOES 1-50, inclusive

21 Defendants.  
22 \_\_\_\_\_ /

Case No. 4:23-cv-01007

**DEFENDANT'S NOTICE OF MOTION  
AND MOTION TO DISMISS  
[PROPOSED] FIRST AMENDED  
COMPLAINT; MEMORANDUM OF  
POINTS AND AUTHORITIES**

Date: July 18, 2024  
Time: 2:00 p.m.  
Courtroom: 6, 2nd Floor  
Judge: Jon S. Tigar

23 TO PLAINTIFF RONALD CUPP AND HIS ATTORNEY OF RECORD:

24 PLEASE TAKE NOTICE THAT on July 18, 2024 at 2:00 p.m., or as soon  
25 thereafter as the matter may be heard in Courtroom 6-2nd Floor of the above-entitled  
26 Court located at Oakland Courthouse, 1301 Clay Street, Oakland, CA 94612, Defendants  
27 COUNTY OF SONOMA; ("County"), TENNIS WICK, TYRA HARRINGTON, TODD  
28 HOFFMAN, and JESSE CABLK (collectively "County Defendants") will and hereby do

1 move this Court for an order granting dismissal of the [Proposed] First Amended  
 2 Complaint for Declaratory Relief, Injunctive Relief and Damages filed on April 29, 2024,  
 3 by Plaintiff Ronald Cupp.

4 This Motion to Dismiss is brought pursuant to Federal Rules of Civil Procedure  
 5 Rule 12 (b)(6), for dismissal of the complaint is warranted based on the following  
 6 separate and independent grounds: Complaint fails to allege facts constituting a  
 7 cognizable legal theory or a plausible claim.

8 STATEMENT OF ISSUES

9 (1) Whether many of the claims re-alleged in the First Amended Complaint  
 10 were previously dismissed by this Court?

11 (2) Whether many of the claims are barred by the applicable statutes of  
 12 limitations?

13 (3) Whether many of the claims alleged in the First Amended Complaint are  
 14 barred by issue preclusion?

15 (4) Whether Plaintiff pled sufficient facts to state a cause of action for *Monell*  
 16 liability against the County of Sonoma?

17 (5) Whether individual Defendants are immune from Plaintiff's Section 1983  
 18 claims pursuant to qualified immunity?

19 (6) Whether any basis for injunctive relief is pleaded?

20 (7) Whether the Younger Abstention Doctrine prohibits federal court  
 21 jurisdiction over this lawsuit pending the outcome of the State Court abatement action?

22 This Motion to Dismiss is based on the attached Memorandum of Points and  
 23 Authorities in support thereof, the accompanying Request for Judicial Notice, the papers  
 24 and pleadings on file herein, and on such further arguments or evidence as may be  
 25 presented prior to adjudication of the motion.

26 Dated: May 10, 2023

ROBERT H. PITTMAN, County Counsel

27 By: /s/ Michael A. King

28 Michael A. King  
 Attorneys for County of Sonoma

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**MEMORANDUM OF POINTS AND AUTHORITIES****I. INTRODUCTION****A. Present Litigation**

The [Proposed] First Amended Complaint for Declaratory Relief, Injunctive Relief and Damages filed herein by Plaintiff Ronald Cupp (“Plaintiff”), purports to state causes of action against the County of Sonoma and various individual named employees (“County Defendants”) for conduct necessitated solely due to Plaintiff’s repeated and unrepentant violations of local building and zoning codes.

Very little of any substance has been changed from the original Complaint, with the exception of adding a claim of “excessive fines” under the 8th Amendment and some new conclusory and argumentative allegations to attempt to bolster a *Monell* claim. The Amended Complaint repeats at length, claims that were already dismissed with prejudice by the Court in its “Order Granting in Part and Denying in Part Defendants’ Motions to Dismiss.” (ECF No. 42). Already dismissed were “all claims against Individual Defendants other than Cablk and Hoffman, all claims to the extent that they are not predicated on the 2022 Incident, Cupp’s Section 1983 claims against Cablk and Hoffman, and Cupp’s claims under the California Constitution. These claims are dismissed without leave to amend on the ground that amendment would be futile.”

The [Proposed] Amended Complaint seems to state various claims against individual defendants other than Cablk and Hoffman, although leave to amend as to Tennis Wick and Tyra Harrington was not allowed. It appears to allege Section 1983 Claims against Cablk and Hoffman, although leave to amend was not allowed since qualified immunity was established. It continues to allege conduct of individual defendants and the County that occurred more than 2 years before filing this action, which are barred by the statute of limitations. Many of the issues alleged were raised in prior litigation filed by Ronald Cupp that was dismissed with prejudice and is precluded from re-litigation.

//

1           **B. Prior Litigation**

2           Plaintiff Ronald Cupp originally filed in pro per, on May 21, 2020, against the  
3 County of Sonoma and some individual defendants, for the same or similar conduct that  
4 is alleged in this new Complaint. See *Cupp v. Smith*, Case No. 4:20-cv-03456 in United  
5 States District Court, Northern District of California. (**Request for Judicial Notice,**  
6 **“RJN” Exhibit No. 1**). During the course of that case, Plaintiff attempted to seek  
7 injunctive relief pertaining to the July 30, 2020 inspection and PG&E shutoff, which was  
8 denied. (**RJN Exhibit No. 2**). The County’s first Motion to Dismiss was granted with and  
9 without leave to amend, including request for injunctive relief and §1983 claim for  
10 excessive fines. (**RJN Exhibit No. 3, pp. 4-5**).

11           Plaintiff Ronald Cupp filed a First Amended Complaint in Case No. 4: 20-cv-  
12 03456, which alleged the same types of “customs, policies, and practices” on the part of  
13 the County of Sonoma as are being alleged in this new lawsuit. (failure to train, supervise  
14 and discipline; failure to discourage unlawful use of authority; failure to admonish, or  
15 even in investigate alleged constitutional violations; ratifying violations; failing to  
16 implement proper procedures for inspection warrants; etc. (**RJN Exhibit No. 4, pp. 10-**  
17 **11**). The Honorable Phyllis J. Hamilton dismissed the same basic *Monell* claims as are  
18 now being raised again in this lawsuit. Plaintiff raised an alleged policy to conduct  
19 unlawful searches, “at least six” other instances of unconstitutional searches, the July 30,  
20 2020 inspection, aerial drone search not automatically prohibited by the 4<sup>th</sup> Amendment,  
21 insufficient allegation that any County policy caused the purported violation. (**RJN**  
22 **Exhibit No. 5, pp. 6-11**).

23           This earlier case was set for trial, but was dismissed with prejudice on March 30,  
24 2023, shortly before trial on the remaining issues. Judgment was entered for Defendant  
25 Andrew Smith. (**RJN Exhibit No. 6**). Plaintiff Cupp did not try that case, obtain a  
26 judgment either for or against him, then appeal the prior rulings of this Court on mostly  
27 the same issues raised in this present Proposed Amended Complaint.

28 //



1 Plaintiff Ronald Cupp filed in pro per, another Complaint of Damages for Civil  
 2 Rights Violations, including requested Declaratory Relief and Injunctive Relief on July  
 3 25, 2022. *Cupp v. County of Sonoma*, et al., U.S. Dist. Case No. 22-cv-04307-TSH. This  
 4 second case alleged essentially the same violations of civil rights against essentially the  
 5 same defendants who are named in the present case. This second case was deemed related  
 6 to the prior case by Related Case Order of the Honorable Phyllis Hamilton filed on  
 7 August 2, 2022. Plaintiff then voluntarily dismissed the case without prejudice on  
 8 August 26, 2022. **(RJN Exhibit No. 7)**

### 9 **C. Administrative Proceedings and State Court Action**

10 Plaintiff still does not acknowledge his own actions that precipitated the events,  
 11 nor the Administrative Order that led to a final decision against him on February 11 and  
 12 12, 2021. **(RJN Exhibit No. 8)**. Since Mr. Cupp chose not to timely abate per that Order,  
 13 that final administrative decision is now the subject of State Court proceedings, *County of*  
 14 *Sonoma v. Ronald Cupp*, Sonoma County Superior Court, Case No. SCV-273578. The  
 15 Complaint in that case was filed on June 23, 2023, after the County Defendants filed their  
 16 Motions to Dismiss the original Complaint in this matter. **(RJN Exhibit No. 9)**

### 17 **D. Request to Dismiss in This Motion**

18 This Court should dismiss Plaintiff's claims against the County Defendants for  
 19 several independent reasons: (1) this Court previously ruled that claims for conduct more  
 20 than 2 years prior to the filing of the Complaint are barred by the statute of limitations;  
 21 (2) individual Defendants Cablk and Hoffman (and Wick and Harrington) have qualified  
 22 immunity for any claims of conduct related to the aerial surveillance, thus there is no 4<sup>th</sup>  
 23 Amendment liability; (3) the claims arising from conduct that allegedly occurred on  
 24 February 15, 2019 through July 30, 2020 has already been adjudicated and dismissed  
 25 with prejudice; (4) any claim of "excessive fines" was previously pleaded and dismissed;  
 26 it is inadequately and incompletely pleaded since it does not identify specific individuals,  
 27 facts, dates when the "fines" were assessed, or the conduct giving rise to the claim; (5)  
 28 the same basic allegations of *Monell* liability were previously dismissed with prejudice,

1 and they are still inadequately pleaded; nor is there causation of harm by any valid claim  
 2 of a constitutional violation; (6) Any injunctive relief should be dismissed since the  
 3 pleadings are not sufficient; (7) County Defendants are entitled to resolve the  
 4 administrative process under the *Younger* abstention doctrine before this case proceeds.

## 5 **II. STATEMENT OF THE CASE**

6 Plaintiff Ronald Cupp re-alleges most of the same claims in his Amended  
 7 Complaint, as he did in his Complaint (ECF No. 1). Under “Nature of Action &  
 8 Introduction” he states that he is seeking compensatory and nominal damages as well as  
 9 injunctive and declaratory relief to “redress violations of the Civil Rights Act of 1872, 42  
 10 U.S.C. § 1983, and the 4th, 5th (*sic*), 8th, and 14th Amendments to the United States  
 11 Constitution, caused by Defendants, and each of them, acting under color of law, acting  
 12 to promote or enforce unconstitutional or unlawful practices, policies, procedures,  
 13 ordinances, resolutions, patterns of conduct, customs and usage of regulations adopted,  
 14 employed or ratified by policy-making supervisors, managers, or decision-makers acting  
 15 on behalf of Defendant COUNTY OF SONOMA (“the County”) in doing or causing the  
 16 following to occur.” (ECF 49, p. 2).

17 The conduct allegedly giving rise to claims in this amended Complaint commence  
 18 with: “(A) Enactment & Implementation of Unconstitutional Code Enforcement Policy”,  
 19 Plaintiff again acknowledges that the County Board of Supervisors enacted and  
 20 implemented official policies in 2017, related to County’s ‘Code Enforcement  
 21 Enhancement Program’”. Plaintiff attaches as Exhibit “D” to his First Amended  
 22 Complaint the Summary Report relating to this Board item, but not the Board Resolution  
 23 or actual action taken. (ECF 49, p. 2; 49-1, pp. 13-19).

24 Despite the language of the Summary Report, the Amended Complaint precedes  
 25 with conclusory language, “the true intent and purpose of CEEP”. These allegations are  
 26 merely more detailed conclusory statements of the previously alleged and dismissed with  
 27 prejudice allegations of “a scheme to illicitly raise revenue” and “penalize landowners”.  
 28 (RJN Exhibit No. 4, p. 11: 14-17; Case No. 20-cv-03456).

1 Again in conclusory terms, Plaintiff agrees that the inspectors and their manager  
2 exercise discretion in assessment of “fines”; claiming that fines are based on “an  
3 arbitrary, capricious and subjective calculation method (which is based on assigning  
4 arbitrary multipliers, such as 1, 5, or 10) that *gives unfettered discretion* to CED’s  
5 inspectors, like Hoffman and Cablk as well as Harrington as their manager, to determine  
6 the amount of a landowner’s fines and penalties ad hoc as each case arises.” (ECF 49, p.  
7 3: 22-26).

8 Even though an excessive fines claim was made and dismissed in Case No. 20-cv-  
9 03456 (RJN Exhibit No. 3, p. 16-17); Plaintiff claims that “as of November 2022, the  
10 County demanded over \$400,000 in fines, penalties, costs, and fees.” (ECF 49, p. 4:3-5).  
11 There is no allegation what the breakdown is of these sums between “fines”, “penalties”,  
12 “costs”, and “fees”. Plaintiff does not allege which date, nor which code violations  
13 “these sums”. Nowhere is it alleged that “these items” are related the July 2022 drone  
14 incident that is the basis for the allegations in “(B) The County’s Use of Warrantless  
15 Searches Involving ‘Drones’”.

16 The Amended Complaint then proceeds with “Facts Common to All Causes of  
17 Action” on page 15, with reference to “Code Enforcement Enhancement Program”  
18 approved in March 2017. The Agenda Item is attached as Exhibit D, but the actual Board  
19 of Supervisors’ Resolution, decision, and enactment is not attached. Only the outline of  
20 selected portions of the Agenda Item and Summary. (ECF 49, pp. 15-17). This pleading  
21 does not provide the actual Board of Supervisors’ action, nor claim that was invalid or  
22 unconstitutional.

23 Plaintiff alleges that the County promulgated a policy on Standard Operating  
24 Procedures on the Use of Unmanned Aircraft Systems” – the drone policy. (ECF 49, p.  
25 21, ¶41). Plaintiff then boldly concludes that “Permit Sonoma’s drones, when used to  
26 conduct inspection searches of private property, enhance the senses of Code Enforcement  
27 officers such as the Defendants beyond what an ordinary human is capable of, and as  
28 such, require a warrant prior to their use to inspect and search private property. (*Florida*

1 *v. Jardines*, 569 U.S. 1, 133 S. Ct. 1409 (2013); *Kyllo v. United States*, 533 U.S. 27  
 2 (2001).)” (ECF 49, p. 22, ¶44). To be clear, neither case involves drones. *Florida v.*  
 3 *Jardines* involved a dog smelling marijuana as it neared the front porch. *Kyllo v. United*  
 4 *States* involved a thermal imaging device not in normal public use that was scanned on  
 5 the house.

6 Plaintiff again ignores Judge Hamilton’s ruling on the subject of any constitutional  
 7 requirement to obtain a warrant before using an aerial drone (RJN Exhibit No. 5, pp.9-10)  
 8 and Judge Tigar’s pronouncement in this action. (ECF 42, pp. 6-7). Plaintiff repeats his  
 9 conclusions and argument about drone searches being warrantless. (ECF 49, p. 24-27,  
 10 ¶¶51-58).

11 Again, despite the prior dismissal with prejudice of *Cupp v. Smith*, Case No. 20-cv-  
 12 03456 and the ruling of this Court that these events are barred by the statute of limitations  
 13 (ECR 42), Plaintiff again argues about conduct related to an inspection warrant issued on  
 14 July 20, 2020 and a subsequent inspection on July 30, 2020. (ECF 49, pp. 29, 31-32,  
 15 ¶¶65-66, 74, 75) Quite naturally, Plaintiff leaves out the discovery of the sizeable  
 16 unpermitted cannabis cultivation that was conducted indoors at the property, and which  
 17 involved very hazardous conditions that presented potential fire danger. Plaintiff does not  
 18 attach these Notices since they refute some of the allegations in the Complaint. Nor does  
 19 he attach the ruling of Judge Hamilton denying requested injunctive relief related to the  
 20 inspection and PG&E service. (**RJN Exhibit No. 2**).

21 There is brief mention of the Administrative Abatement Hearing proceedings  
 22 without discussion of the outcome of the hearing in which Mr. Cupp was allowed ample  
 23 opportunity to provide any evidence he had to dispute the overwhelming evidence  
 24 presented to support the findings of the violations. (ECF 49, pp. 33-34). Plaintiff fails to  
 25 mention the Statement of Decision and Administrative Order (**RJN Exhibit No. 8**) nor  
 26 the State court action now required to enforce that Order. (**RJN Exhibit No. 9**).

27 The supposed unconstitutional conduct by County employees took place in June  
 28 2022, when Defendants Cablk and Hoffman allegedly flew a drone over the Arlington

1 Ave. property without a warrant and without consent pursuant to policy. (ECF 49, p. 35,  
 2 ¶84). Plaintiff alleges that FAA regulations exist, and the County is prohibited from  
 3 certain drone operations. Plaintiff concludes that it is the custom, practice and procedure  
 4 to routinely use drones to inspect and search private property of the residents of the  
 5 County, without obtaining a warrant beforehand, and in disregard of the FAA regulations.  
 6 (ECF, ¶¶85-91, pp. 29-37)

7 There are numerous conclusory allegations about alleged conduct on unknown  
 8 dates at unspecified locations, by various individuals including Defendant Hoffman.  
 9 These allegations about supposed incidents, are apparently being mentioned to support  
 10 some conclusory claim of “unconstitutional practice, custom or procedure.” (ECF 49, pp.  
 11 37-38, 40; ¶¶ 92-96, 101).

12 **Count One** (Against All Defendants) claims a violation of the 4th Amendment  
 13 prohibition against unreasonable search for the March 27, 2020 use of a drone and the  
 14 June 1, 2022 use of a drone. (ECF 49, ¶106, p.41-42) **Count Two** (Against All  
 15 Defendants) states in conclusory terms without specifying which acts supposedly involve  
 16 imposing “excessive fines and penalties in violation of the 8th Amendment.” (ECF 49,  
 17 ¶10, p.43). Presumably it is civil penalties awarded to the County in the administrative  
 18 Statement of Decision and Administrative Order. (**RJN Exhibit No. 8**) Without any  
 19 relationship to specific events or conduct, the Amended Complaint concludes that the  
 20 unspecified Defendants “their acts and omissions as alleged herein are indicative and  
 21 representative of unconstitutional policies promulgated by the County and/or a repeated  
 22 course of conduct by Defendants, and each of them, in unconstitutionally enforcing the  
 23 County’s policies, which is tantamount to a custom, practice or procedure of the County  
 24 and its agency, Permit Sonoma, of condoning and encouraging the disregard of the  
 25 constitutional rights of the residents of the County.” (ECF p. 43, §111)

26 **Count Three** consists of a variety of conclusory allegations about “an official  
 27 policy, practice, procedure, or custom of permitting the occurrence of the wrongs set forth  
 28 in this pleading, ..., failed to properly train, supervise, retrain, monitor, or take corrective

1 action with respect to the Director, Code Enforcement Manager, Senior Code  
 2 Enforcement Officers, and other inspection officers working with CED.” There are  
 3 conclusory allegations of failure to adequately train and supervise Code Enforcement  
 4 Officer. There are additional conclusory allegations on information and belief about Todd  
 5 Hoffman and a “propensity to violate constitutional rights of others”. (ECF 49, pp. 44-  
 6 47, ¶¶113-124).

7 **Count Four** (the former Count Eight) alleges trespass without any specificity.  
 8 The claim does not specify the date of entry without a warrant or without a properly  
 9 issued warrant. (ECF 49, pp. 47-48). Presumably these are the February 15, 2019 and  
 10 July 30, 2020 inspections. Judgment in favor of Defendant Smith for the February 15,  
 11 2019, visit was already obtained.

12 **Count Five** (former Count Nine) alleges “invasion of privacy” which is  
 13 duplicative of the other claims; but also, does not specify which alleged actions  
 14 supposedly give rise to any claims. Presumably it is the alleged aerial drone flyover  
 15 which was already dealt with by Judge Hamilton in Case No. 20-cv-03456, and this Court  
 16 in ECF No. 42.

17 The Prayer for Relief requests some form of declaratory relief that actions were  
 18 unlawful and unconstitutional; 2) – 4), various temporary restraining orders and  
 19 injunctive relief (without ever alleging a basis for that relief); 5) for damages and punitive  
 20 damages; 6) for costs and attorney’s fees.

### 21 **III. FRCP 12 MOTION TO DISMISS STANDARDS**

22 A claim for relief may also be dismissed under Federal Rule of Civil Procedure 12(b)(6)  
 23 for a “failure to state a claim upon which relief can be granted.” (Fed. R. Civ. Proc. 12(b)(6)  
 24 (“Rule 12 (b)(6)”).) A request for dismissal under Rule 12(b)(6) may be based on the lack of a  
 25 cognizable legal theory, or the absence of sufficient facts alleged under a cognizable legal  
 26 theory. (*Johnson v. Riverside Healthcare Sys.*, 534 F.3d 1116, 1121 (9<sup>th</sup> Cir. 2008).) To  
 27 withstand a Rule 12(b)(6) motion to dismiss, a complaint must contain sufficient factual matter,  
 28 accepted as true, to state a claim for relief that is plausible on its face. (*Ashcroft v. Iqbal*, 556

U.S. 662, 679 (2009).) Determining whether a complaint states a plausible claim for relief will, as the Court of Appeals observed, be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. *Ashcroft, Id.* 556 U.S. at 679.

Bare assertions which amount to “nothing more than a formulaic recitation of the elements” of a claim for relief are conclusory and not entitled to be assumed true. (*Iqbal*, 129 S. Ct. at p. 1951, quoting *Bell Atlantic v. Twombly*, 550 U.S. 544, 555 (2007).)

"[C]onclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss for failure to state a claim." *Epstein v. Wash. Energy Co.*, 83 F.3d 1136, 1140 (9th Cir. 1996) .

When considering a motion to dismiss, the Court may consider undisputed matters of public record through a request for judicial notice, including state court records. (*United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9<sup>th</sup> Cir. 1992); *Busch v. Torres*, 905 F.Supp. 766, 769, fn. 1 and 2 (C.D. Cal. 1995)).

Leave to amend should be denied if it is clear that the deficiencies in the complaint cannot be cured by amendment. (*See Lopez v. Smith*, 203 F.3d 1122, 1130 (9<sup>th</sup> Cir. 2000); *Noll v. Carlson*, 809 F.2d 1446, 1448 (9<sup>th</sup> Cir. 1987))

#### IV. LEGAL ANALYSIS

##### A. Plaintiff's Claims Arising Prior to March 2021, Have Been Dismissed Because They Are Barred by the Statute of Limitations

With the exception of any attempt to claim conduct of the County in July 2022, most of the claims have already been dismissed by the Court in its “Order Granting in Part and Denying in Part Defendants’ Motions to Dismiss”. To the extent any additional conduct or claims arise out of conduct that took place prior to March 6, 2021, the same authority applies. (ECF 42, pp. 3-4).

##### B. Facts Alleged Are Insufficient to State a Section 1983 Claim Against Any Individual Defendant

The Court has already decided without leave to amend, that the claim of 4th Amendment violation by Defendants Cablk and Hoffman for aerial surveillance, is not automatically protected by the 4th Amendment. No clearly established right was violated. Qualified immunity applies to these claims. (ECF 42, pp. 5-7).



1 No leave to amend was granted as to any Section 1983 claims against any individual  
 2 defendant, including Tennis Wick and Tyra Harrington. They would be entitled to qualified  
 3 immunity just like Hoffman and Calbk since there is no clearly established right that aerial  
 4 surveillance would have violated Cupp's 4th Amendment right. Furthermore, supervisory  
 5 liability under §1983 is only actionable if the supervisor personally participated in or directed a  
 6 constitutional violation of a subordinate, or knew of the violation and failed to act to prevent it.  
 7 There is no respondeat superior liability under §1983. *Taylor v. List*, 880 F.2d 1040, 1045 (9th  
 8 Cir. 1989); *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002).

### 9 **C. Claims Preclusion Applies to Most of These Claims**

10 Plaintiff Ronald Cupp raised issues pertaining to the February 15, 2019 inspection, the  
 11 July 30, 2020 inspection, the PG& E shutoff, and related Monell claims, in *Cupp v. County of*  
 12 *Sonoma, et al.*, U.S. District Court, Northern California, Case No. 20-cv-03456. That case was  
 13 dismissed with prejudice and a Judgment entered in favor of the remaining defendant, Andrew  
 14 Smith, on March 30, 2023.

15 In the original complaint in Case No. 20-cv-03456, the request for a TRO and  
 16 Preliminary Injunction, the Amended Complaint, and argument in response to County  
 17 Defendants two Motions to Dismiss, all the same issues were raised as are being re-hashed in  
 18 this matter with the exception of the June 2022 alleged flyover. Instead of taking that case to  
 19 trial, then appealing those issues, Plaintiff Ronald Cupp dismissed that case with prejudice. That  
 20 dismissal resulting in an adverse judgment, precludes him from raising any of the same claims in  
 21 this case.

22 Under the doctrine of claim preclusion, "a final judgment on the merits" in a case  
 23 precludes a successive action between "identical parties or privies" concerning "the same 'claim'  
 24 or cause of action." *Mpoyo v. Litton Electro-Optical Sys.*, 430 F.3d 985, 987 (9th Cir. 2005);  
 25 *Sidhu v. Flecto Co.*, 279 F.3d 896, 900 (9th Cir. 2002). Res judicata, or claim preclusion,  
 26 prohibits lawsuits on "any claims that were raised or could have been raised" in a prior action.  
 27 *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 713 (9th Cir. 2001). Claim preclusion  
 28 requires a final judgment on the merits. "Dismissal with prejudice" is interchangeable with "final



1 judgment on the merits." *Stewart v. U.S. Bancorp*, 297 F.3d 953, 956 (9th Cir. 2002); see also  
 2 *Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 505 (2001).

3 In addition to the prohibitions already placed on Plaintiff due to statute of limitations and  
 4 lack of any clearly established constitutional right, these same allegations and claims were made  
 5 in the prior case dismissed with prejudice on March 30, 2023. They cannot be resurrected in this  
 6 case. This includes any attempt to state a valid *Monell* claim which was dismissed in the prior  
 7 action.

#### 8 **D. Plaintiffs Have Not Stated a Valid Claim Based on Monell**

9 Under the well-established standards of *Monell v. Department of Social Services of City*  
 10 *of New York*, 436 U.S. 658 (1978), the County may be called to answer a Section 1983 claim in  
 11 federal court only if the complaint plausibly alleges a pattern, practice, or custom of  
 12 constitutional violations. See *Monell*, 436 U.S. at 690-91.

13 Single or isolated events in the context of this type of case are simply insufficient to state  
 14 a plausible claim under *Monell*: “[I]ability for improper custom may not be predicated on  
 15 isolated or sporadic incidents; it must be founded upon practices of sufficient duration,  
 16 frequency, and consistency that the conduct has become a traditional method of carrying out  
 17 policy.” (*Trevino v. Gates*, 99 F.3d 911, 918, (9th Cir. 2008) “A policy or practice requires  
 18 more than a few occurrences of challenged conduct. A single or even a few isolated and sporadic  
 19 incidents of unconstitutional conduct are not enough to impose municipal liability under Section  
 20 1983.” *Gant v. Cnty. of Los Angeles*, 772 F.3d 608, 618 (9th Cir. 2014).) Under *Monell*  
 21 standards, an “isolated instance . . . is insufficient evidence of a ‘policy statement, ordinance,  
 22 regulation, or decision officially adopted and promulgated by’ the County.” (See *Marsh v.*  
 23 *County of San Diego*, 680 F.3d 1148, 1159 (9th Cir. 2012) (internal citations omitted).)

24 Plaintiff has alleged a few incidents when his fellow cannabis growers supposedly saw  
 25 drones in the vicinity of their property, but these isolated instances, even if true, do not change in  
 26 any significant way, the allegations about a “policy or practice” since the claim still deals with  
 27 Ronald Cupp’s allegations of a drone flight in March 2020, and another supposed nearby flight  
 28

1 in June 2022. The flight in March 2020 is not actionable nor are the alleged flights over his  
2 friends' properties.

3 **E. There is No Monell Liability Under Respondeat Superior**

4 The County cannot be held liable merely for employing a tortfeasor under a respondeat  
5 superior theory. (*Monell, Id.*, 436 U.S. at 691.) Instead, a county can only be held liable under  
6 §1983 where the county itself caused the constitutional violation through “execution of a  
7 government’s policy or custom, whether made by its lawmakers or those whose edicts are acts  
8 may fairly be said to represent official policy.” (*Id.*, at 694.) Accordingly, “a plaintiff must  
9 allege that the action inflicting injury flowed from either an explicitly adopted or a tacitly  
10 authorized [municipal] policy.” *Gibson v. United States*, 781 F.2d 1334, 1337 (9th Cir. 1986).

11 Further, a plaintiff must allege a “direct causal link” between the constitutional  
12 deprivation and a municipal policy or custom. *Erdman v. Cochise County, Arizona*, 926 F.2d  
13 877, 882 (9th Cir. 1991), quoting *City of Canton v. Harris*, 489 U.S. 378, 385 (1989). This  
14 requires that a plaintiff actually allege the specific “policy” that caused the constitutional  
15 deprivation and resulting injury – mistakes or isolated events of municipal officials do not arise  
16 to the level of “policy” sufficient for § 1983 liability. (*Id.*)

17 In this case, Ronald Cupp is clearly blaming individual inspectors with “unfettered  
18 discretion” for his woes. Their conduct is not directed by the two polic(ies) that are mentioned,  
19 nor the conclusory pleading about lack of supervision and training.

20 **F. Monell Claim Is Not Established By Broad Conclusory Pleading**

21 In *Gygax v. Grule* 1994 WL 715625 (1994) this Court faced similar overbroad  
22 conclusory pleading as present in this case. The Court granted Defendant county and county  
23 employees’ Motion to Dismiss as to eleven causes of action for trespass and violations of  
24 constitutional rights. “A plaintiff must allege facts, not simply conclusions, that show that an  
25 individual was personally involved in the deprivation of his [or her] civil rights.” See *Barren v.*  
26 *Harrington*, 152 F.3d 1193, 1194 (9<sup>th</sup> Cir. 1998)

27 In this case, the only specific facts that allege deprivation of civil rights relate to the  
28 claims of improper searches in February 2019, July 2020, and June 1, 2022. Also mentioned on

1 “information and belief” is a vague reference to a May 2020 drone flyover. The other allegations  
2 are supposition, innuendo, conclusion, and argument.

3 **G. Claim for Injunctive Relief Should Be Dismissed**

4 There are no allegations in the Amended Complaint that support a claim for injunctive  
5 relief for Ronald Cupp, let alone one of the magnitude seeming to be sought in the “Prayer for  
6 Relief”. See for example *Baird v. Bonta* 81 F.4<sup>th</sup> 1036, 1040 for the appropriate legal standard to  
7 analyze a preliminary injunction motion. See also the discussion by the Honorable Phyllis J.  
8 Hamilton in denying a request for injunctive relief in Case No. 20-cv-03456. **(RJN Exhibit**  
9 **No. 2, pp. 4-8).**

10 **H. County Requests Injunctive and Declaratory Relief Be Dismissed Based**  
11 **Upon Younger Abstention Doctrine; Any Remaining Damage Claims Should**  
12 **Be Stayed**

13 The facts and circumstances leading to inspections, the notice of violations of County  
14 codes, requests to abate unpermitted and nuisance conditions at the Property, and requests for  
15 civil penalties; resulted in an administrative hearing with a Decision by Hearing Officer on  
16 February 11, 2021. **(RJN Exhibit No. 8)**

17 After the abatement hearing, and after several months delay, Plaintiff began efforts to  
18 remedy the conditions at the property. Attempts were unsuccessful settle the issues surrounding  
19 the code violations and accruing penalties. County of Sonoma was forced to file a legal action in  
20 State Court to obtain the final abatement of conditions and recovery of civil penalties awarded by  
21 the Hearing Officer on February 11, 2021. That Complaint was filed on June 23, 2023, in  
22 Superior Court of California, County of Sonoma, Case No. SCV-273578, County of Sonoma v.  
23 Ronald Cupp, et al. **(RJN Exhibit No. 9 )**

24 In civil cases, the *Younger* Abstention Doctrine is: “appropriate only when the state  
25 proceedings: (1) are ongoing, (2) are quasi-criminal enforcement actions or involve a state’s  
26 interest in enforcing the orders and judgments of its courts, (3) implicate an important state  
27 interest, and (4) allow litigants to raise federal challenges.” (*Readylink Healthcare, Inc., v. State*  
28 *Compensation Ins. Fund*, 754 F.3d 754, 759 (9<sup>th</sup> Cir. 2014) (citing *Sprint Communs., Inc. v.*  
*Jacobs*, 134 S. Ct. 584, 593-94 (2013).) “If these ‘threshold elements’ are met, we then consider

1 whether the federal action would have the practical effect of enjoining the state proceedings and  
 2 whether an exception to *Younger* applies.” (*Id.*, quoting *Gilbertson v. Albright*, 381 F.3d 965,  
 3 983-84 (9<sup>th</sup> Cir. 2004).)

4 The Ninth Circuit has applied the *Younger* Abstention Doctrine to a 42 U.S.C. section  
 5 1983 lawsuit challenging an on-going state code enforcement action. (*Herrera v. City of*  
 6 *Palmdale*, 918 F.3d 1037 (2019)). *Hererra* involved an action by the City of Palmdale asserting  
 7 that there were numerous code violations at Plaintiffs’ motel property and it was a public  
 8 nuisance. The City filed a complaint in state court almost simultaneously to the Plaintiff owners’  
 9 federal court action for damages and declaratory and injunctive relief.

10 The 9<sup>th</sup> Circuit held the state court nuisance enforcement action by the City was a (1) was  
 11 a civil enforcement proceeding within the scope of the *Younger* doctrine; (2) implicated  
 12 important state interests; and (3) provided an adequate opportunity to raise the federal  
 13 constitutional claims. The Court noted 918 F.3d at 1048 that “*Younger* applies to requests for  
 14 declaratory relief because ‘ordinarily a declaratory judgment will result in precisely the same  
 15 interference with and disruption of state proceedings that the longstanding policy limiting  
 16 injunctions was designed to avoid.’” *Gilbertson v. Albright* (9<sup>th</sup> Cir. 2004) 381 F.3d 965,971,  
 17 citing *Samuels v. Mackell* (1971) 401 U.S. 66, 72.

18 In the context of claims for damages, the Ninth Circuit has held that “*Younger* principles  
 19 apply . . . because a determination that the federal plaintiff’s constitutional rights have been  
 20 violated would have the same practical effect as a declaration or injunction on pending state  
 21 proceedings.” *Gilbertson v. Albright*, 381 F.3d 965, 968 (9<sup>th</sup> Cir. 2004). In contrast to claims for  
 22 injunctive relief, however, damages actions should not be dismissed but stayed “until the state  
 23 proceedings are completed.” *Id.*

24 The Complaint in Superior Court of California, Sonoma County No. SCV-273578, is  
 25 primarily an attempt to complete enforcement of the Final Administrative Hearing Order, entered  
 26 after hearing in the code enforcement administrative proceedings against Ronald Cupp  
 27 commenced with the Notice & Orders issued on February 15, 2019, and subsequent Notice &  
 28 Orders on July 30, 2020. Plaintiff was provided his due process to contest these noticed

1 violations in an administrative hearing that resulted in a Decision on February 11, 2021. He also  
 2 was provided due process when he contested the constitutionality of the original inspection on  
 3 February 15, 2019, in *Cupp v. Smith*, Case No. 4:20-cv-03456, and raised the issues about the  
 4 July 30, 2020 inspection and County policies.

5 Under the Younger abstention doctrine, federal courts must “abstain from granting  
 6 injunctive or declaratory relief that would interfere with pending state judicial proceedings.”  
 7 *Martinez v. Newport Beach City*, 125 F.3d 777, 781 (9th Cir. 1997) (overruled on other grounds).

## 8 **V. CONCLUSION**

9 Plaintiff is improperly creating controversy where it does not exist. He makes broad  
 10 accusations, against the County and several individual defendants without legal or factual  
 11 justification. Many of the alleged claims have been adjudicated in prior litigation or dismissed in  
 12 this lawsuit. The County Defendants, jointly and individually, request the Court dismiss this  
 13 lawsuit with prejudice for the numerous reasons described above.

14  
 15 Dated: May 10, 2024

ROBERT H. PITTMAN, County Counsel

16  
 17 By: /s/ Michael A. King  
 18 Michael A. King  
 19 Attorneys for Defendant  
 20 COUNTY OF SONOMA, et al.  
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